



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 1652-99

6 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) BUMED Ortho ltr 5890, 27 Dec 99
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was discharged by reason of physical disability, vice erroneous enlistment.

2. The Board, consisting of Ms. Madison and Messrs. Chapman and Mazza, reviewed Petitioner's allegations of error and injustice on 30 March 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 17 September 1998, after having obtained a waiver of physical disqualification because of pre-service knee surgery. He was evaluated in a Navy medical clinic on 13 October 1998. He reported that he landed wrong after jumping out of bed, heard a pop when he landed, and developed knee pain and swelling. The physician who examined Petitioner on that date felt that he had a torn meniscus, and recommended "waiver reversal". Petitioner was discharged by reason of erroneous enlistment on 31 October 1998, because of the presumed torn meniscus. He underwent arthroscopic surgery at a civilian facility on 12 November 1998, with a presumed diagnosis of internal derangement, left knee: medial meniscus tear. The anterior cruciate ligament and

menisci on the medial and lateral sides of the knee were examined during the procedure, and found to be intact. Post-surgical diagnoses of chondromalacia and loose bodies, left knee, were established.

d. In correspondence attached as enclosure (2), a designee of the Specialty Advisor for Orthopedic Surgery advised the Board, in effect, that Petitioner's discharge was erroneous, because Petitioner did not have a torn meniscus. He recommended that the reason for Petitioner's separation be changed to show that he was discharged because of an osteochondral injury which existed prior to enlistment and was aggravated by military service. In his opinion, a medical board should have been convened only if it had been determined that the "injury was a new process initiated by training." On or about 28 March 2000, the staff of the Board obtained clarification of the opinion from the author of enclosure (2). The author indicated that it was impossible to tell whether or not there was service aggravation of the preexisting condition, but that disability separation would be warranted if the condition had been aggravated by Petitioner's service.

CONCLUSION:

Upon review and consideration of all the evidence of record, and resolving reasonable doubt in Petitioner's favor, the Board concludes that the injury to Petitioner's left knee he sustained in the Navy aggravated his preexisting knee condition and rendered him unfit for service. Accordingly, it finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

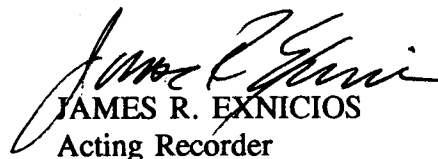
a. That Petitioner's naval record be corrected to show that he was not discharged from the Navy on 31 October 1998.

b. That Petitioner's naval record be further corrected to show that he was discharged by reason of physical disability on 30 November 1998, pursuant to 10 U.S. Code 1203, due to osteochondral injury, left knee, rated at 0% under VA code 5003.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director